



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board
North Coast Region
John W. Corbett, Chairman

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold Schwarzenegger
Governor

July 25, 2007

In the Matter of

Water Quality Certification

for the

ARCATA, CITY OF – MCDANIEL SLOUGH MARSH ENHANCEMENT PROJECT
WDID NO. 1B06106WNHU

APPLICANT:	City of Arcata
RECEIVING WATER:	Humboldt Bay
HYDROLOGIC UNIT:	Eureka Plain Hydrologic Unit No. 110.00
COUNTY:	Humboldt
FILE NAME:	Arcata, City of – McDaniel Slough Marsh Enhancement Project

BY THE EXECUTIVE OFFICER:

1. On July, 2007, the City of Arcata, Environmental Services Department, filed an application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) for activities associated with the McDaniel Slough Marsh Enhancement Project (project) on the Humboldt Bay, Humboldt County. The purpose of the approximately 240 acre project is to remove fish barriers, deepen historic slough channels, partially remove obsolete and failing levees and restore the tidal wetland functions. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on June 21, 2007, and posted information describing the project on the Regional Water Board's website. We did not receive any public comments on this project.
2. The applicant is partnering with California Department of Fish and Game (CDFG) on this project; the applicant owns approximately 88 acres and CDFG owns approximately 166 acres of the project site. The project is located adjacent to, and on the northwest boundary of, the Arcata Marsh and Wildlife Sanctuary (AMWS). The City-owned portion of the site links the AMWS to the CDFG Mad River Slough Wildlife Area, which is located west of Janes Creek/ McDaniel

California Environmental Protection Agency

Recycled Paper

Slough. South of the AMWS is the Humboldt Bay National Wildlife Refuge. Together, these properties make up more than 1000 acres of contiguous public land north of Humboldt Bay. Field surveys conducted on the proposed project site documented nine biotic habitats. The habitats include ruderal/upland; agricultural field; 3 types of marsh, including freshwater, brackish and salt; willow riparian; mudflat; riparian and developed land.

3. The applicant has divided the project activities into phases. Under Phase I, to occur between June 2007 and November 2008, the applicant proposes to:
 - Excavate soil to begin constructing two approximately ten-foot deep freshwater ponds
 - Use excavated soil from the freshwater pond area to construct levees on the eastern portion of site - levees will be constructed along the east side of V Street and around an area which will be made into a brackish pond in the future; pond will initially be a seasonal freshwater pond
 - Plant vegetation on newly constructed levees
 - Excavate deposited sediment from historic slough channels on the Eastern portion of the site. Soil will be used to build levees and to construct sills in the newly contoured channels to provide habitat for goby
 - Remove portions of the levee bordering McDaniel Slough(Janes Creek), leaving some portions of the levee intact to serve as roosting islands and to break up wave fetch within the project area to promote deposition of suspended sediment
 - Contour bottom of future brackish pond, build and vegetate islands in brackish pond
 - Construct trails, viewing structures, kiosks
 - Plant upland areas with native vegetation
 - Install stormwater BMPs throughout the project area
 - PG & E will reinforce its power tower structures in the project area

The Phase 1 removal of the Janes Creek lateral levees will involve removal of approximately 6,200 cubic feet of material from 1,200 linear feet of levee bordering the McDaniel Slough and Janes Creek. Prior to breaching the levee, the applicant will excavate aggraded sediment from approximately 5,200 linear feet of slough channels located on agricultural land.

4. Phase II may occur either before November 2007, or during the 2008 construction season, depending on timing/outcome of USFWS and NOAA consultations). Under this Phase, the applicant proposes to:

- Install a tidegate on the open culvert to control flows and allow the western area to dry out while maintaining water in lower reaches of western remnant channels
 - Complete construction of freshwater ponds
 - Use excavated material from freshwater pond area to construct new levees on western portion of site - south side of V Street area and westward.
 - Plant vegetation on newly constructed levees.
 - Isolate borrow ditch area, dewater, install culvert with tide gate and connect to existing levee
 - Remove deposited sediment from western remnant channels and construct a low sill to retain approximately 20-30% of high tide flows, in order to maintain/enhance post project habitat for goby
 - Place any remaining suitable soil from freshwater pond construction (up to 40,000 cubic yards) on up to 23 acres of low elevation subsided areas adjacent to the modified remnant to build up the marsh plain by up to 1 foot, in order to accelerate development of pickleweed habitat.
 - Complete design infrastructure for brackish pond (this will not involve any field work)
 - Remove tidegates, but leave culverts in place, in order to allow increased, but limited flows into the restoration area
 - Allow levees to season/settle
5. The Phase II marsh plain build up using up to 40,000 cubic yards of excavated soil from the freshwater and brackish pond sites to 23 acres of low elevation marsh involves grading the area to increase the elevation by one foot. After grading the area will be seeded with local seed stock.
6. The Phase II tidegates will be removed from four 48-inch culverts; culverts will remain in place to allow limited flows into the restoration area during phase 2. The culverts will be removed during phase 3.
7. Phase III is to be conducted the season following completion of Phase II. Under this Phase, the applicant proposes to:
- Install salt marsh vegetation
 - Remove four culverts from levees, one at a time, to allow unrestricted tidal flow passage into and from the restoration area.
 - Breach the bay front levee
 - Reinforce levees at mouth of McDaniel Slough with rock
 - Begin operation of brackish marsh, by discharging approximately 1-6 cfs of treated wastewater from the City of Arcata wastewater treatment facility (WWTF) into the brackish pond area. It should be noted that

the current National Pollutant Discharge Elimination System (NPDES) permit for the WWTF does not identify the brackish pond as an acceptable point of discharge for treated effluent; this proposed discharge may only occur after the City of Arcata has applied for and received an amendment to the permit for the WWTF allowing discharge of treated effluent to the brackish pond.

8. Culvert removal in Phase III involves blocking the existing culverts to prevent flow from the creek while work is occurring on each successive culvert. If the water level is not below the height of the culvert, the applicant will temporarily isolate the culvert work area.
9. The project activities are scheduled to begin during the summer of 2007 and continue until no later than 2012. All drainage structures will be in place by November 15 of each year. The landowner shall be responsible for maintenance procedures. From October 15th through November 15th of any year of operations, erosion control facilities shall be installed and maintained if the U.S. Weather Service, or the Weather Channel for the Eureka area, forecasts a 30% chance of rain before the next day, and prior to weekend or other shutdown periods.
10. The federal Clean Water Act (33 U.S.C. §§ 1251-1387) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act, including water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313). Clean Water Act section 401 directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirement of state law. Section 401 further provides that state certification conditions shall become conditions of any federal license or permit for the project.
11. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this water quality certification.
12. The project is expected to result in a total area of permanent fill to wetlands of 6.5 acres associated with construction of new levees. Upland areas that will be converted to wetlands totals 6.64 acres. A total of 168.1 acres of salt marsh, 11.9 acres of sub-tidal estuarine habitat and 14.7 acres of brackish marsh will be

created. The project has been designed to avoid and minimize adverse impacts and permanent impacts to waters of the United States. Mitigation measures to avoid significant environmental effects are incorporated as conditions of this permit.

13. Compensatory mitigation includes the restoration of salt marsh, tidal connection and influence to approximately 200 acres of wetland, and salmonid and wildlife habitat. Non-compensatory mitigation measures include the use of Best Management Practices for equipment operation and erosion and sediment control. If it appears that the increase in tidewaters will damage the cement base of the Pacific Gas and Electric (PG&E) towers located within the project area, then PG&E will build up the cement tower base and employ BMPs associated with transportation, storage, dust control and management of spills and sediment control.
14. The applicant will follow the Erosion and Storm Water Pollution Plan (SWPPP) dated July 11, 2007
15. The applicant has applied to the United States Army Corps of Engineers for authorization to perform the project under individual permit, pursuant to Clean Water Act, section 404.

On December 20, 2006, the Humboldt County Community Development certified an Environmental Impact Report (EIR) (SCH No.2003022091) for the project in order to comply with CEQA. The Regional Water Board has considered the environmental document and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment. The following is a summary of the relevant impacts and mitigation in the project EIR:

- Impact: the project may impact the drainage due to construction of a new perimeter levee along the western boundary.

Mitigation:

1. Install a new culvert and tidegate through the new levee at the southwest corner of the project site at the location of the existing borrow ditch.
2. Install a drainage ditch along the outside of the new levee; both the borrow ditch and the drainage ditch will drain through the culvert and tidegate.

- Impact: Construction activities may impact surface water quality.

Mitigation:

Project design incorporates the following measures to mitigate impacts due to construction related soil erosion:

1. Activities to occur during the dry season from May 15 thru November 15
2. Activities between October 15 and November 15 are contingent on less than 30% chance of rain (refer to finding #9 above).
3. All exposed soil that could erode to a waterway will be mulched with weed-free straw mulch.

4. All vehicles and construction equipment shall be parked and equipment refueling and maintenance will take place only in designated area where potential spills of fuel, lubricants or coolant can be contained and cleaned up without impacts to aquatic habitats
- Impact: Stormwater may pick up pollutants and adversely impact surface water quality.

Mitigation:

1. Erosion and Sediment Control Plan shall include storm water pollution prevention measures applicable to the scope of construction activities proposed and shall include Best Management Practices (BMPs) as provided in the California Department of Transportation (Caltrans) Storm Water Quality Handbook or equivalent approved by the City of Arcata
2. The applicant will adhere to the Stormwater Pollution Prevention Plan (SWPPP)

Receiving Water: Humboldt Bay, Eureka Plain Hydrologic Unit No. 110.00

Filled or Excavated Area: Area Temporarily Impacted: 59.34 acres of wetland, marsh and channels.
Area Permanently Impacted: 6.5 acres of wetland

Latitude/Longitude: 40.871111 N/124.101944 W

Expiration: October 15, 2012

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the City of Arcata McDaniel Slough Marsh Enhancement project (WDID No. 1B06106WNHU), as described in the application, will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the City of Arcata complies with the following terms and conditions:

1. This certification action is subject to modification or revocation upon administrative or judicial review; including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 2200, and owed by the applicant.

4. City of Arcata shall notify the Regional Water Board prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff the opportunity to be present onsite during construction, and to answer any public inquiries that may arise regarding the project.
5. The conditions and monitoring and reporting requirements detailed in the Monitoring, Mitigation and Adaptive Management Plan (MMAP) in the Final EIR are hereby incorporated by reference and are conditions of approval of this certification. Notwithstanding any more specific conditions in this certification, the City of Arcata shall comply with all mitigation measures identified in the MMAP.
6. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
7. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
8. The City of Arcata shall provide a copy of this Order to all contractors and all subcontractors conducting the work, and require that a copy of the Order remain in their possession at the work site. The City of Arcata shall be responsible for work conducted by its contractors or subcontractors.
9. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the City of Arcata shall cease the associated project activities immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
10. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
11. Prior to implementing any change to the project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer.
12. All project work shall be conducted as described in this Order and in the application submitted by the Applicant. If the Regional Water Board is not notified of a significant alteration to the project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement actions.

13. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.
14. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
15. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. In response to a suspected violation of any condition of this certification, the Regional Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
16. In the event of any change in control of ownership of land presently owned or controlled by the City of Arcata, the City of Arcata shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, and the address and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also describe any changes to the project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the project as described in this Order.
17. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited to and all proposed mitigation being completed in strict compliance with the applicant's project description, and b) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

18. The authorization of this certification for any dredge and fill activities expires on October 15, 2012. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

If you have any questions or comments, please call Diana Henriouille at (707) 576-2350.

Catherine E. Kuhlman
Executive Officer

072507_CEW_ArcataCityof_McDanielSlough_401cert.doc

Original to: Mr. Mark Andre, City of Arcata Deputy Director, Environmental Services
Department, 736 F Street, Arcata, CA 95521

Copies to: U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka,
CA 95502

Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions,
1455 Market Street, San Francisco, CA 94103-1398